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**SUBSTITUTE SENATE BILL 5867**

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**State of Washington**

**58th Legislature**

**2003 Regular Session**

**By** Senate Committee on Natural Resources, Energy & Water (originally sponsored by Senators Swecker, Oke, Doumit, Horn, Prentice, Eide, Schmidt, Regala, B. Sheldon and Jacobsen)

READ FIRST TIME 02/28/03.

1       AN ACT Relating to environmental remediation; amending RCW  
2 82.04.050, 82.04.2635, and 82.04.190; providing an effective date; and  
3 declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5       **Sec. 1.** RCW 82.04.050 and 2002 c 178 s 1 are each amended to read  
6 as follows:

7       (1) "Sale at retail" or "retail sale" means every sale of tangible  
8 personal property (including articles produced, fabricated, or  
9 imprinted) to all persons irrespective of the nature of their business  
10 and including, among others, without limiting the scope hereof, persons  
11 who install, repair, clean, alter, improve, construct, or decorate real  
12 or personal property of or for consumers other than a sale to a person  
13 who presents a resale certificate under RCW 82.04.470 and who:

14       (a) Purchases for the purpose of resale as tangible personal  
15 property in the regular course of business without intervening use by  
16 such person, but a purchase for the purpose of resale by a regional  
17 transit authority under RCW 81.112.300 is not a sale for resale; or

18       (b) Installs, repairs, cleans, alters, imprints, improves,  
19 constructs, or decorates real or personal property of or for consumers,

1 if such tangible personal property becomes an ingredient or component  
2 of such real or personal property without intervening use by such  
3 person; or

4 (c) Purchases for the purpose of consuming the property purchased  
5 in producing for sale a new article of tangible personal property or  
6 substance, of which such property becomes an ingredient or component or  
7 is a chemical used in processing, when the primary purpose of such  
8 chemical is to create a chemical reaction directly through contact with  
9 an ingredient of a new article being produced for sale; or

10 (d) Purchases for the purpose of consuming the property purchased  
11 in producing ferrosilicon which is subsequently used in producing  
12 magnesium for sale, if the primary purpose of such property is to  
13 create a chemical reaction directly through contact with an ingredient  
14 of ferrosilicon; or

15 (e) Purchases for the purpose of providing the property to  
16 consumers as part of competitive telephone service, as defined in RCW  
17 82.04.065. The term shall include every sale of tangible personal  
18 property which is used or consumed or to be used or consumed in the  
19 performance of any activity classified as a "sale at retail" or "retail  
20 sale" even though such property is resold or utilized as provided in  
21 (a), (b), (c), (d), or (e) of this subsection following such use. The  
22 term also means every sale of tangible personal property to persons  
23 engaged in any business which is taxable under RCW 82.04.280 (2) and  
24 (7) and 82.04.290.

25 (2) The term "sale at retail" or "retail sale" shall include the  
26 sale of or charge made for tangible personal property consumed and/or  
27 for labor and services rendered in respect to the following:

28 (a) The installing, repairing, cleaning, altering, imprinting, or  
29 improving of tangible personal property of or for consumers, including  
30 charges made for the mere use of facilities in respect thereto, but  
31 excluding charges made for the use of coin-operated laundry facilities  
32 when such facilities are situated in an apartment house, rooming house,  
33 or mobile home park for the exclusive use of the tenants thereof, and  
34 also excluding sales of laundry service to nonprofit health care  
35 facilities, and excluding services rendered in respect to live animals,  
36 birds and insects;

37 (b) The constructing, repairing, decorating, or improving of new or  
38 existing buildings or other structures under, upon, or above real

1 property of or for consumers, including the installing or attaching of  
2 any article of tangible personal property therein or thereto, whether  
3 or not such personal property becomes a part of the realty by virtue of  
4 installation, and shall also include the sale of services or charges  
5 made for the clearing of land and the moving of earth excepting the  
6 mere leveling of land used in commercial farming or agriculture;

7 (c) The charge for labor and services rendered in respect to  
8 constructing, repairing, or improving any structure upon, above, or  
9 under any real property owned by an owner who conveys the property by  
10 title, possession, or any other means to the person performing such  
11 construction, repair, or improvement for the purpose of performing such  
12 construction, repair, or improvement and the property is then  
13 reconveyed by title, possession, or any other means to the original  
14 owner;

15 (d) The sale of or charge made for labor and services rendered in  
16 respect to the cleaning, fumigating, razing or moving of existing  
17 buildings or structures, but shall not include the charge made for  
18 janitorial services; and for purposes of this section the term  
19 "janitorial services" shall mean those cleaning and caretaking services  
20 ordinarily performed by commercial janitor service businesses  
21 including, but not limited to, wall and window washing, floor cleaning  
22 and waxing, and the cleaning in place of rugs, drapes and upholstery.  
23 The term "janitorial services" does not include painting, papering,  
24 repairing, furnace or septic tank cleaning, snow removal or  
25 sandblasting;

26 (e) The sale of or charge made for labor and services rendered in  
27 respect to automobile towing and similar automotive transportation  
28 services, but not in respect to those required to report and pay taxes  
29 under chapter 82.16 RCW;

30 (f) The sale of and charge made for the furnishing of lodging and  
31 all other services by a hotel, rooming house, tourist court, motel,  
32 trailer camp, and the granting of any similar license to use real  
33 property, as distinguished from the renting or leasing of real  
34 property, and it shall be presumed that the occupancy of real property  
35 for a continuous period of one month or more constitutes a rental or  
36 lease of real property and not a mere license to use or enjoy the same.  
37 For the purposes of this subsection, it shall be presumed that the sale

1 of and charge made for the furnishing of lodging for a continuous  
2 period of one month or more to a person is a rental or lease of real  
3 property and not a mere license to enjoy the same;

4 (g) The sale of or charge made for tangible personal property,  
5 labor and services to persons taxable under (a), (b), (c), (d), (e),  
6 and (f) of this subsection when such sales or charges are for property,  
7 labor and services which are used or consumed in whole or in part by  
8 such persons in the performance of any activity defined as a "sale at  
9 retail" or "retail sale" even though such property, labor and services  
10 may be resold after such use or consumption. Nothing contained in this  
11 subsection shall be construed to modify subsection (1) of this section  
12 and nothing contained in subsection (1) of this section shall be  
13 construed to modify this subsection.

14 (3) The term "sale at retail" or "retail sale" shall include the  
15 sale of or charge made for personal, business, or professional services  
16 including amounts designated as interest, rents, fees, admission, and  
17 other service emoluments however designated, received by persons  
18 engaging in the following business activities:

19 (a) Amusement and recreation services including but not limited to  
20 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips  
21 for sightseeing purposes, and others, when provided to consumers;

22 (b) Abstract, title insurance, and escrow services;

23 (c) Credit bureau services;

24 (d) Automobile parking and storage garage services;

25 (e) Landscape maintenance and horticultural services but excluding  
26 (i) horticultural services provided to farmers and (ii) pruning,  
27 trimming, repairing, removing, and clearing of trees and brush near  
28 electric transmission or distribution lines or equipment, if performed  
29 by or at the direction of an electric utility;

30 (f) Service charges associated with tickets to professional  
31 sporting events; and

32 (g) The following personal services: Physical fitness services,  
33 tanning salon services, tattoo parlor services, steam bath services,  
34 turkish bath services, escort services, and dating services.

35 (4) The term shall also include the renting or leasing of tangible  
36 personal property to consumers and the rental of equipment with an  
37 operator.

1 (5) The term shall also include the providing of telephone service,  
2 as defined in RCW 82.04.065, to consumers.

3 (6) The term shall also include the sale of canned software other  
4 than a sale to a person who presents a resale certificate under RCW  
5 82.04.470, regardless of the method of delivery to the end user, but  
6 shall not include custom software or the customization of canned  
7 software.

8 (7) The term shall not include the sale of or charge made for labor  
9 and services rendered in respect to the building, repairing, or  
10 improving of any street, place, road, highway, easement, right of way,  
11 mass public transportation terminal or parking facility, bridge,  
12 tunnel, or trestle which is owned by a municipal corporation or  
13 political subdivision of the state or by the United States and which is  
14 used or to be used primarily for foot or vehicular traffic including  
15 mass transportation vehicles of any kind.

16 (8) The term shall also not include sales of chemical sprays or  
17 washes to persons for the purpose of postharvest treatment of fruit for  
18 the prevention of scald, fungus, mold, or decay, nor shall it include  
19 sales of feed, seed, seedlings, fertilizer, agents for enhanced  
20 pollination including insects such as bees, and spray materials to:  
21 (a) Persons who participate in the federal conservation reserve  
22 program, the environmental quality incentives program, the wetlands  
23 reserve program, and the wildlife habitat incentives program, or their  
24 successors administered by the United States department of agriculture;  
25 (b) farmers for the purpose of producing for sale any agricultural  
26 product; and (c) farmers acting under cooperative habitat development  
27 or access contracts with an organization exempt from federal income tax  
28 under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of  
29 fish and wildlife to produce or improve wildlife habitat on land that  
30 the farmer owns or leases.

31 (9) The term shall not include the sale of or charge made for labor  
32 and services rendered in respect to the constructing, repairing,  
33 decorating, or improving of new or existing buildings or other  
34 structures under, upon, or above real property of or for the United  
35 States, any instrumentality thereof, or a county or city housing  
36 authority created pursuant to chapter 35.82 RCW, including the  
37 installing, or attaching of any article of tangible personal property  
38 therein or thereto, whether or not such personal property becomes a

1 part of the realty by virtue of installation. Nor shall the term  
2 include the sale of services or charges made for the clearing of land  
3 and the moving of earth of or for the United States, any  
4 instrumentality thereof, or a county or city housing authority. Nor  
5 shall the term include the sale of services or charges made for  
6 cleaning up for the United States, or its instrumentalities,  
7 radioactive waste and other byproducts of weapons production and  
8 nuclear research and development.

9 (10) (~~Until July 1, 2003,~~) The term shall not include the sale of  
10 or charge made for labor and services rendered for environmental  
11 remedial action as defined in RCW 82.04.2635(2).

12 **Sec. 2.** RCW 82.04.2635 and 2001 c 320 s 2 are each amended to read  
13 as follows:

14 (1) Upon every person engaging within this state in the business of  
15 environmental remedial action, the amount of tax with respect to such  
16 business shall be equal to the value of the gross income of the  
17 business multiplied by the rate 0.471 percent.

18 (2) For purposes of this chapter, "environmental remedial action"  
19 means:

20 (a) Those services related to the identification, investigation, or  
21 cleanup arising out of the release or threatened release of hazardous  
22 substances that are conducted under contract with the department of  
23 ecology or under an enforcement order, agreed order, or consent decree  
24 executed by the department of ecology, or those services, when  
25 evaluated as a whole, that are the substantial equivalent of a  
26 department of ecology-conducted or supervised remedial action under the  
27 model toxics control act, chapter 70.105D RCW; or

28 (b) Those services related to the identification, investigation, or  
29 cleanup of a facility that are conducted under contract with the United  
30 States environmental protection agency or under an order or consent  
31 decree executed by the United States environmental protection agency,  
32 or that are consistent with the national contingency plan adopted under  
33 the comprehensive environmental response compensation and liability  
34 act, 42 U.S.C. Sec. 9605 as it exists on July 1, 1998, and those  
35 services are conducted at facilities that are included on the national  
36 priorities list adopted under 42 U.S.C. Sec. 9605 as it exists on July

1 1, 1998, or at facilities subject to a removal action authorized under  
2 42 U.S.C. Sec. 9604 as it exists on July 1, 1998.

3 (3) A site is eligible for environmental remedial action upon  
4 submittal, via certified mail to the department of ecology and the  
5 department of revenue, of the following:

6 (a) A certification from the owner, the department of ecology, or  
7 the United States environmental protection agency, containing the  
8 following information:

9 (i) The location of the site, shown on a map and identified by  
10 parcel number or numbers and street address;

11 (ii) The name and address and daytime phone number of a contact  
12 person;

13 (iii) A statement that the proposed environmental remedial actions  
14 will be conducted by the department of ecology or its authorized  
15 contractor under chapter 70.105D RCW or will be substantially  
16 equivalent to a department of ecology-conducted or supervised remedial  
17 action under the model toxics control act, chapter 70.105D RCW, or will  
18 be conducted by the United States environmental protection agency or  
19 its authorized contractor or will be consistent with the national  
20 contingency plan under 42 U.S.C. Sec. 9605 as it exists on July 1,  
21 1998; and

22 (iv) A description of the proposed environmental remedial actions  
23 to be taken; and

24 (b)(i) A certification from a certified underground storage tank  
25 service supervisor as authorized in chapter 90.76 RCW, from a  
26 professional engineer licensed in the state of Washington, or from an  
27 environmental professional who subscribes to a code of professional  
28 responsibility administered by a recognized organization representing  
29 such professions containing the following information:

30 (A) Confirmation that an environmental remedial action as defined  
31 in this section is to be conducted at the site;

32 (B) The location of the site, shown on a map and identified by  
33 parcel number or numbers and street address, and the approximate  
34 location of the proposed environmental remedial action; and

35 (C) The name, address, telephone number, and uniform business  
36 identifier of the person providing the certification; or

37 (ii) If applicable to the site, a copy of an enforcement order,

1 agreed order, or consent decree executed by the department of ecology  
2 or the United States environmental protection agency.

3 (4) The department of revenue shall respond in writing to the owner  
4 within thirty days confirming receipt of the certification, or  
5 certifications, of eligibility. Under RCW 82.32.330(3)(m),  
6 certification is subject to disclosure and copies may be obtained from  
7 the department upon request. The request shall be in writing and shall  
8 identify the site by county and parcel number or numbers.

9 (5) The owner shall provide a copy of the confirmation from the  
10 department of revenue to each person who renders environmental remedial  
11 action at the site. Each person who renders such action shall  
12 separately state the charges for labor and services associated with the  
13 environmental remedial action.

14 (6) Upon completion of the environmental remedial action, the owner  
15 shall submit to the department of ecology a report documenting the  
16 environmental remedial actions conducted at the site and documenting  
17 compliance with the requirements of chapter 70.105D RCW.

18 (7) In addition to any other penalties, a person who files a  
19 certificate with the department of ecology or the department of revenue  
20 that contains falsehoods or misrepresentations are subject to penalties  
21 authorized under chapter 18.43 or 90.76 RCW or RCW 9A.76.175. Also, a  
22 person who improperly reports the person's tax class shall be assessed  
23 a penalty of fifty percent of the tax due, in addition to other taxes  
24 or penalties, together with interest. The department of revenue shall  
25 waive the penalty imposed under this section if it finds that the  
26 falsehoods or misrepresentations or improper reporting of the tax  
27 classification was due to circumstances beyond the control of the  
28 person.

29 ~~((8) This section expires July 1, 2003.))~~

30 **Sec. 3.** RCW 82.04.190 and 2002 c 367 s 2 are each amended to read  
31 as follows:

32 "Consumer" means the following:

33 (1) Any person who purchases, acquires, owns, holds, or uses any  
34 article of tangible personal property irrespective of the nature of the  
35 person's business and including, among others, without limiting the  
36 scope hereof, persons who install, repair, clean, alter, improve,  
37 construct, or decorate real or personal property of or for consumers

1 other than for the purpose (a) of resale as tangible personal property  
2 in the regular course of business or (b) of incorporating such property  
3 as an ingredient or component of real or personal property when  
4 installing, repairing, cleaning, altering, imprinting, improving,  
5 constructing, or decorating such real or personal property of or for  
6 consumers or (c) of consuming such property in producing for sale a new  
7 article of tangible personal property or a new substance, of which such  
8 property becomes an ingredient or component or as a chemical used in  
9 processing, when the primary purpose of such chemical is to create a  
10 chemical reaction directly through contact with an ingredient of a new  
11 article being produced for sale or (d) purchases for the purpose of  
12 consuming the property purchased in producing ferrosilicon which is  
13 subsequently used in producing magnesium for sale, if the primary  
14 purpose of such property is to create a chemical reaction directly  
15 through contact with an ingredient of ferrosilicon;

16 (2)(a) Any person engaged in any business activity taxable under  
17 RCW 82.04.290; (b) any person who purchases, acquires, or uses any  
18 telephone service as defined in RCW 82.04.065, other than for resale in  
19 the regular course of business; (c) any person who purchases, acquires,  
20 or uses any service defined in RCW 82.04.050(2)(a) or any amusement and  
21 recreation service defined in RCW 82.04.050(3)(a), other than for  
22 resale in the regular course of business; and (d) any person who is an  
23 end user of software;

24 (3) Any person engaged in the business of contracting for the  
25 building, repairing or improving of any street, place, road, highway,  
26 easement, right of way, mass public transportation terminal or parking  
27 facility, bridge, tunnel, or trestle which is owned by a municipal  
28 corporation or political subdivision of the state of Washington or by  
29 the United States and which is used or to be used primarily for foot or  
30 vehicular traffic including mass transportation vehicles of any kind as  
31 defined in RCW 82.04.280, in respect to tangible personal property when  
32 such person incorporates such property as an ingredient or component of  
33 such publicly owned street, place, road, highway, easement, right of  
34 way, mass public transportation terminal or parking facility, bridge,  
35 tunnel, or trestle by installing, placing or spreading the property in  
36 or upon the right of way of such street, place, road, highway,  
37 easement, bridge, tunnel, or trestle or in or upon the site of such  
38 mass public transportation terminal or parking facility;

1 (4) Any person who is an owner, lessee or has the right of  
2 possession to or an easement in real property which is being  
3 constructed, repaired, decorated, improved, or otherwise altered by a  
4 person engaged in business, excluding only (a) municipal corporations  
5 or political subdivisions of the state in respect to labor and services  
6 rendered to their real property which is used or held for public road  
7 purposes, and (b) the United States, instrumentalities thereof, and  
8 county and city housing authorities created pursuant to chapter 35.82  
9 RCW in respect to labor and services rendered to their real property.  
10 Nothing contained in this or any other subsection of this definition  
11 shall be construed to modify any other definition of "consumer";

12 (5) Any person who is an owner, lessee, or has the right of  
13 possession to personal property which is being constructed, repaired,  
14 improved, cleaned, imprinted, or otherwise altered by a person engaged  
15 in business;

16 (6) Any person engaged in the business of constructing, repairing,  
17 decorating, or improving new or existing buildings or other structures  
18 under, upon, or above real property of or for the United States, any  
19 instrumentality thereof, or a county or city housing authority created  
20 pursuant to chapter 35.82 RCW, including the installing or attaching of  
21 any article of tangible personal property therein or thereto, whether  
22 or not such personal property becomes a part of the realty by virtue of  
23 installation; also, any person engaged in the business of clearing land  
24 and moving earth of or for the United States, any instrumentality  
25 thereof, or a county or city housing authority created pursuant to  
26 chapter 35.82 RCW. Any such person shall be a consumer within the  
27 meaning of this subsection in respect to tangible personal property  
28 incorporated into, installed in, or attached to such building or other  
29 structure by such person;

30 (7) Any person who is a lessor of machinery and equipment, the  
31 rental of which is exempt from the tax imposed by RCW 82.08.020 under  
32 RCW 82.08.02565, with respect to the sale of or charge made for  
33 tangible personal property consumed in respect to repairing the  
34 machinery and equipment, if the tangible personal property has a useful  
35 life of less than one year. Nothing contained in this or any other  
36 subsection of this section shall be construed to modify any other  
37 definition of "consumer";

1           (8) Any person engaged in the business of cleaning up for the  
2 United States, or its instrumentalities, radioactive waste and other  
3 byproducts of weapons production and nuclear research and development;  
4 and

5           (9) (~~Until July 1, 2003,~~) Any person engaged in the business of  
6 conducting environmental remedial action as defined in RCW  
7 82.04.2635(2).

8           NEW SECTION. **Sec. 4.** This act is necessary for the immediate  
9 preservation of the public peace, health, or safety, or support of the  
10 state government and its existing public institutions, and takes effect  
11 July 1, 2003.

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